



# **MAMUSA LOCAL MUNICIPALITY**



## **Debt Write-Off Policy 2016/17**



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## **1. INTRODUCTION**

The objective is to ensure sound and sustainable management of the debts of the municipality in terms of MFMA No 56 of 2003. To provide core principles, mechanisms and processes required to deal with backlogs of debt management in a municipal environment.

## **2. PURPOSE AND SCOPE OF THE POLICY**

The purpose of this policy is to provide a framework for regulating the writing-off of irrecoverable debts and the consequent further enhancement of the municipality's debt management strategy.

## **3. DEFINITIONS:**

In this policy, unless the context indicates otherwise:

- a. "the municipality" means the Mamusa Local Municipality;
- b. "debt" means an obligation sounding in money and/or services due and owing to the municipality;
- c. "debtor" means a person, natural or juristic, who owes a debt to the municipality and who may be compelled to pay in terms of a claim or demand by the municipality;
- d. "irrecoverable debt" means the debt which in terms of this policy meets the criteria for writing off;
- e. "metered services" means the supply of a service in which the consumption of the commodity supplied (such as water or electricity) is measured by means of a meter;
- f. "occupier" in relation to a property, means a person in occupation thereof irrespective of whether that person has the right to occupy;
- g. "owner" means:
  - i. in relation to an immovable property, a person in whose name ownership thereof is registered in the Deeds Office;
  - ii. a trustee, in the case of an immovable property which is trust property;
  - iii. an executor or administrator in the case of an immovable property which falls in a deceased estate;
  - iv. a trustee or liquidator, in the case of an immovable property in an insolvent estate or an estate in liquidation;
  - v. v) a judicial manager, in the case of an immovable property owned by a corporate body under judicial management;
  - vi. a curator, in the case of an immovable property registered in the name of a person under curatorship;
  - vii. a lessee, in the case of an immovable property that is registered in the name of the municipality and is let by it;



- viii. a buyer, in the case of an immovable property sold by the municipality to the buyer and of which possession has been given to the buyer pending registration of ownership in the name of the buyer.

#### **4. Transparency and accountability**

- a) The process of writing-off of debts by the municipality will be undertaken in a transparent and accountable manner.
- b) A proposal to write-off a debt, either as part of a group of debts, or individually, will be considered by the Council on its merits pursuant to the procedure and with due regard to the information which must be provided to it in terms of this policy.
- c) The Constitution entitles everyone to administrative action which is lawful, reasonable and procedurally fair and to be given reasons for any such action which affects them.
- d) The Promotion of Administrative Justice Act 3/2000 is the legislation required by the Constitution to give effect to the right to just administrative action and in order to promote and efficient administration and good governance and to create a culture of accountability, openness and transparency in public administration or in the exercise of a public power or the performance of a public function.
- e) This policy incorporates the above principles by providing parameters and procedures to guide the municipality and its officers in implementing it, and thereby exercising a public power through a series of administrative actions. In so doing, this policy seeks to provide certainty on the part of those affected by it with regard to how the municipality will act in the circumstances covered by the policy and uniformity of action on the part of its officers.
- f) The municipality commits itself and its officers to act fairly and justly in an open and transparent manner in implementing this policy.

#### **5. Procedures for writing-off of debt**

- a) General
  - i. A debt may only be written-off by resolution of the Council.
  - ii. The Council may only write-off a debt after consideration of a report and recommendations from the Accounting Officer containing at least the information prescribed by this policy and a certification from the Council's attorney seized with recovery thereof or from the Accounting Officer that the debt collection procedures of the municipality (as provided for in the municipality's Customer Care, Credit Control and Debt Collection Policy) have been adhered to and that in his/her opinion there is no reasonable prospect of recovery of the debt and/or that further efforts to do so would be uneconomical.



- iii. A debt may only be written-off by the Council against the municipality's provision for doubtful debts, being a funded reserve established pursuant to the municipality's Funding and Reserves Policy and otherwise compliant with regulation 8 of the Municipal Budget Reporting Regulations.
  - iv. The writing-off of a debt by the Council is an accounting procedure and does not constitute abandonment by the municipality of its claim against a debtor.
  - v. Copies of the reports to the Council in regard to all debts written-off is to be retained in the records of the municipality against the name of the debtor and the Accounting Officer must implement a system to alert the municipality to the contents thereof in the event that the debtor again seeks to establish a credit-based relationship with the municipality.
- b) Information to be placed by the Accounting Officer before the Council in a report recommending the writing-off of a debt or group of debts:
- i. In the case of an individual debt, particulars of the debt including:
    - the amount of the debt, stating separately the capital amount and interest accrued;
    - the composition of the capital amount (cause of action);
    - whether the debt was secured by a mortgage bond or any other security and whether such security has been realised.
  - ii. In the case of a group of debts, particulars of the group including:
    - motivation for submission of the debts in question as a group (e.g. cause of action, collection procedures and prospect of recovery similar in each case)
    - the total amount of the debts in the group, stating separately
    - the total of the capital amounts and interest accrued;
    - the composition of the capital amount (cause of action);
    - whether any debt was secured by a mortgage bond or any other security and whether such security has been realised.
  - iii. Steps taken to recover the debt or group of debts including:
    - all debt collection procedures and mechanisms implemented;
    - the results yielded thereby;
    - any arrangements entered into with the debtor during the course of collection;
    - an age analysis of the debt or group of debts.
  - iv. Particulars of the debtor including:



- whether the debtor is a natural or juristic person;
  - if the debtor is a natural person, whether he/she is a registered indigent in terms of the municipality's Indigent Management Policy, whether he/she has been sequestered and if so, the outcome of the municipality's claim against the insolvent estate.
  - If the debtor is a juristic person, whether it has been liquidated and if so, the outcome of the municipality's claim against the estate in liquidation;
  - whether the debtor can be traced;
  - whether the debtor is gainfully employed or otherwise in receipt of an income and the outcome of any arrangements made with the debtor, emoluments attachment orders issued and/or any distribution orders made.
- v. Details of any attachable movable or immovable property which had been owned by the debtor and the outcome of execution by the municipality against it.
- vi. Any other information relating to the debt which may be requested by the Council.
- vii. Details of costs incurred thus far in pursuing collection of the debt, and an estimation of the potential liability of the municipality for further costs should the debt be pursued.
- viii. The certificate referred to in 5(a)(ii) above.

## **6. Factors which the Council may take into account in writing-off debt**

- a. A debt is deemed to be irrecoverable:
- i. if it has prescribed in terms of the Prescription Act 68/1969; or
  - ii. the debtor has been sequestered or liquidated and the proceeds of the sequestration or the liquidation are insufficient to satisfy the debt.
- b. A debt may not be deemed to be irrecoverable unless:
- i. all of the debtor's attachable movable and immovable property has been sold in execution and the proceeds have not satisfied the debt;
  - ii. if the debtor is employed or in receipt of an income and all processes to attach that income or to obtain a court order for payment of the debt in instalments have been exhausted.



- c. A debt may be considered irrecoverable if all reasonable attempts to trace the whereabouts of the debtor have been unsuccessful and no attachable assets have been found.

## **7. General provisions relating to the writing-off of debt**

- a) Not less often than every quarter during the municipality's financial year, the Accounting Officer shall submit a report to the Council on debts to be written-off.
- b) A debt shall not be regarded as written-off until the Council has so resolved.
- c) Prior to writing-off a debt and after consideration of the report and recommendation of the Accounting Officer in terms of this policy, the Council must be satisfied that:
  - i. the municipality has exhausted all means of debt recovery provided for in its Customer Care, Credit Control and Debt Collection Policy;
  - ii. recovery of the debt in question has been pursued diligently and completely;
  - iii. no other reasonably possible and practical means of recovering the debt exists.
- d) The writing-off of a debt must be recorded in the records of the municipality and in its books of account in terms of Generally Recognised Accounting Practice.
- e) The Council must in its budget make provision for doubtful debts through the medium of a funded reserve established in terms of the municipality's Funding and Reserve Policy, compliant with regulation 8, Municipal Budget and Reporting Regulations.
- f) Should any provision of this policy conflict with a provision of the municipality's Indigent Management Policy relating to a debt of a registered indigent, the latter policy takes precedence.
- g) In writing-off a debt, the municipality does not abandon its claim and all amounts recovered in reduction of a debt subsequently to its writing-off shall be recorded in the books of the municipality as income.

## **8. ENFORCEMENT/IMPLEMENTATION**

This policy must approved by the Municipal Council in terms of resolution.

This policy will be applicable to all employees, community and councillors within the demarcation area of Mamusa.



## **9. REGULAR REVIEW PROCESS**

The rates policy must be reviewed on an annual basis to ensure that it complies with the Municipality's strategic objectives as contained in the Integrated Development Plan and with legislation

## **RESOLUTION No. 41/2015**